S.B. CIVIL MISC. APPEAL NO.431/2007.
Smt. Shakuntala & Ors. **Vs.** Ved Bhushan Sethi & Anr.

Date of Order :: 30th July 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Ms. Pramila Acharya, for the appellants.

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For awarding compensation to the wife, sons and daughter of the vehicular accident victim Parbat Singh, said to be about 64 years of age, the Tribunal has noticed the assertions of the claimants that the deceased retired from Co-operative Department and was getting monthly pension at Rs.5,815/-, and was earning about Rs.15,000/- per month in audit work, and was further earning Rs.2,00,000/- per annum in agriculture over 55 bighas of irrigated land.

The Tribunal has taken pecuniary loss towards the amount of pension at Rs.3,015/- per month with reference to the statement of the wife of the deceased that she was now getting pension at Rs.2,800/- per month. In relation to the audit income, the Tribunal has noticed from the documentary evidence Exs. 48, 49 and 50 that the deceased was appointed as Auditor in different accounting years for several of the Co-operative Societies and was paid audit fees at Rs.1,000/- per audit. The Tribunal has found that lastly in the year 2003-2004 (per Ex. 48), the deceased had carried out audit work of 4 out

of 15 Co-operative Societies and got Rs.1,000/- per audit. The Tribunal has, therefore, taken income of the deceased from audit work at Rs.4,000/- per annum (wrongly stated per month in the award). So far the agriculture income is concerned, the Tribunal has referred to the Jamabandi Ex.52 and found that no land was shown in the name of the deceased nor the claimants examined any other independent witness regarding agriculture income and, therefore, did not accept any such component of his income. The Tribunal has, therefore, taken annual income of the deceased at Rs.40,180/- [Rs.36,180/- towards pension (3,015 x 12); and Rs.4,000/- towards audit income]; and with application of multiplier of 5 after deducting one-third on personal expenditure of the deceased, has assessed pecuniary loss at Rs.1,33,935/- (26,787 x 5).

The Tribunal has noticed that the accident occurred on 30.03.2004 and the victim expired at Ahmedabad on 07.04.2004 and has allowed Rs.2,758/- towards treatment expenditure with reference to the bills produced, and another Rs.2,000/- towards transportation. The Tribunal has further allowed Rs.3,000/- towards damage caused to the motorcycle of the victim. Apart from the aforesaid, the Tribunal has allowed Rs.35,000/- towards general damages and in this manner has awarded compensation in the sum of Rs.1,76,693/- and has allowed interest @ 7.5% per annum from the date of

filing of the claim application. By way of this appeal, the claimants seek enhancement.

Having examined the record of the case, this Court is satisfied that the considerations adopted by the Tribunal remain proper and valid and the award made in this case cannot be said to be suffering from any error of law or facts.

The assertion on agriculture income of the deceased remains hollow and baseless. No reliable evidence is available on record in proof of any such component of income and the Jamabandi Ex.52 does not show any land standing in the name of the victim but only one-third share of the claimant No.1, wife of the deceased, has been shown in the land stated therein. Even if it be assumed for the sake of arguments that there was any such component of agriculture income, according to the own showing of the claimants, the same was earned by engaging labourers. Such income, if any, obviously retains itself to the claimants and cannot be taken towards loss of contribution.

So far audit income is concerned, the statement on the victim's such income at Rs.15,000/- per month appears to be highly exaggerated and incorrect. From the documentary evidence including the certificate Ex.48, it appears that the victim was paid Rs.1,000/- towards every single audit and in the year 2003-2004 he had carried out audit of 4 Societies out of

15 allotted. The Tribunal has rightly taken such component of income at Rs.4,000/- per annum. The Tribunal has further taken reasonable amount towards loss of pension income at Rs.3,015/- per month.

Even if the assessment as made by the Tribunal on the income of the deceased at Rs.40,180/- per annum is considered to be moderate, the fact remains that the victim was about 64 years of age and the claimants are the wife in 60 years, and children in 34-37 years of age. In such family set up, taking of two-third of the estimated income towards loss of contribution for the claimants could only be said to be rather on the higher side. Therefore, in the ultimate analysis, the assessment of pecuniary loss at Rs.1,33,935/- cannot be said to be low or insufficient. The Tribunal has not restricted on any other component of loss and has further allowed general damages at Rs.35,000/-.

The award of compensation as made in this case cannot be said to be too low or grossly inadequate; and rules out any scope for enhancement in appeal.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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